

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL SPAFFORD, JR., individually and on behalf of a class of Washington residents similarly situated,

NO. CV06-0479 RAJ

ORDER GRANTING PROVISIONAL
CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT

ECHOSTAR COMMUNICATIONS
CORPORATION, a Nevada corporation; et al.,

Defendants.

ECHOSTAR COMMUNICATIONS
CORPORATION, a Colorado corporation, et
al.,

Third-Party Plaintiffs,

V.

SATELLITE SYSTEMS NETWORK, LLC., a California limited liability corporation,

Third-Party Defendant.

WHEREAS, Plaintiff Michael Spafford, Jr., on behalf of himself and the Class of Washington residents, and Defendants, all acting by and through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle this litigation upon the terms as set forth in the Stipulation of Settlement.

1 WHEREAS, this Court has reviewed and considered the Stipulation of Settlement and
2 the Amended Stipulation of Settlement, entered into among the parties in this Action
3 (collectively, the “Stipulation”), together with all exhibits thereto, the record in this case, and
4 the briefs and arguments of counsel;

5 WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the
6 Action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure,
7 including numerosity, ascertainability, community of interest, predominance of common
8 issues, superiority and typicality, that the Plaintiff, Michael Spafford, Jr., is an adequate
9 representative of the Class and Class Counsel are adequate to represent the Class (as defined in
10 below);

11 NOW, THEREFORE, based upon the files, records and proceedings herein, and it
12 appearing to the Court that a hearing should be held on notice to the Class of the proposed
13 settlement to determine finally if the terms of the settlement are fair, reasonable and adequate;

14 **IT IS HEREBY ORDERED THAT:**

15 1. All terms and definitions used herein have the same meanings as set forth in the
16 Stipulation.

17 2. The proposed settlement set forth in the Stipulation is hereby preliminarily
18 approved as being within the range of reasonableness such that notice thereof should be given
19 to members of the Class.

20 3. For purposes of determining whether the terms of the settlement should be
21 finally approved as fair, reasonable and adequate, a Settlement Class is conditionally certified
22 for purposes of this settlement as consisting of:

23 All Washington residents who received one or more
24 commercial solicitations for “DISH Network” products or
25 services via an automatic dialing and announcing device
26 (“ADAD”) in the State of Washington at any time prior to
the date of the Preliminary Approval Order. Excluded from
the class are the judge to whom this case is assigned, any

1 member of the judge's immediate family, as well as the
2 judge's staff and their immediate families.

3 4. Plaintiff Michael Spafford, Jr. is hereby found to be adequate and is therefore
4 appointed as representative of the Class and the following counsel are hereby found to be
5 adequate and are hereby appointed as counsel for the Class:

6 TOUSLEY BRAIN STEPHENS PLLC
7 Kim D. Stephens, P.S., WSBA #11984
8 EchoStarSettlement@tousley.com
9 1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: 1-800-259-2652

10 GALLAGHER LAW OFFICE, P.S.
11 Daniel C. Gallagher, WSBA #21940
seattlelaw@hotmail.com
12 10611 Battle Point Drive NE
Bainbridge Island, Washington 98110
Telephone: 206-855-9310

13 LEVY RAM & OLSON LLP
14 Michael F. Ram, *Pro Hac Vice*
mfr@lrolaw.com
15 Erica L. Craven, *Pro Hac Vice*
elc@lrolaw.com
16 Karl Olson, *Pro Hac Vice*
ko@lrolaw.com
17 639 Front Street, Fourth Floor
San Francisco, California 94111-1913
18 Telephone: 415-433-4949

19 5. If final approval of the settlement is not obtained, this certification order,
20 including the above description of the Settlement Class and appointment of the Class
21 Representative and Class Counsel, shall be vacated and this action shall proceed as though the
22 certification and appointments never occurred.

23 6. Pending final determination of whether the settlement should be approved,
24 neither Plaintiff Michael Spafford, Jr. nor any member of the Class, whether directly,
25 indirectly, representatively or in any other capacity shall commence or prosecute any action or
26 proceeding in any court or tribunal asserting any of the claims herein against the Defendants
herein.

1 7. The Notice of Pendency and Settlement of Class Action (“Class Notice”),
2 which is attached to the Stipulation as Exhibit A, and appended to this order in the court’s
3 electronic docket as Exhibit 1, is hereby approved as to form.

4 8. EchoStar has agreed to have the Class Notice published no later than October
5 10th for the first publication and no later than October 24th for the second publication in
6 substantially the form attached electronically as Exhibit 1 hereto. Notice will be published for
7 one day in the following newspapers of general circulation: (1) *Vancouver-Columbian*, (2)
8 *Seattle Times/Post-Intelligencer*; (3) *Spokane Spokesman-Review*, and (4) *Tri-City Herald*.
9 Fourteen days later, the same notice will be published for one day in each of the following
10 newspapers of general circulation: (1) *Vancouver-Columbian*, (2) *Tacoma News Tribune*, (3)
11 *Bellingham Herald*, (4) *Spokane Spokesman-Review*, and (5) *Yakima Herald Republic*. Class
12 Counsel will monitor and track those Class Members seeking exclusion or objecting to the
13 proposed Settlement.

14 9. Defendants shall pay all costs associated with preparation and publication of the
15 Class Notice.

16 10. Defendants are directed to file with the Court and serve upon Class counsel,
17 prior to the final approval hearing, a declaration confirming that dissemination of the Notice
18 has taken place in accordance with this Order.

19 11. The Court finds that the dissemination of the Notice under the terms and in the
20 format provided for in the Stipulation and this Order constitutes the best notice practicable
21 under the circumstances that it is due and sufficient notice for all purposes to all persons
22 entitled to such notice and that if fully satisfies the requirements of due process and all other
23 applicable laws.

24 12. A hearing (the “Fairness Hearing”) shall be held on December 3, 2008, at 10:00
25 a.m., in the Honorable Richard A. Jones’ court room, United States District Court, Western
26 District of Washington to determine whether the proposed settlement of this action should be

1 finally approved as fair, reasonable, and adequate and whether the Final Judgment approving
2 the settlement and dismissing all claims asserted in the litigation on the merits and with
3 prejudice should be entered. The Fairness Hearing may be postponed, adjourned or
4 rescheduled by order of the Court without further notice to the members of the Class.

5 13. Objections by any Class Member to the Stipulation of Settlement shall be heard
6 and any papers submitted in support of said objections shall be considered by the Court at the
7 Fairness Hearing only if, on or before November 24, 2008, such objector files with the Clerk
8 of the United States District Court, Western District of Seattle: (1) his, her or its objection and
9 a statement of the basis for such objection; (2) if applicable, a Notice of Intention to Appear at
10 the Fairness Hearing; (3) documentary proof that he, she or it is a member of the Class, and
11 (4) serves copies of the foregoing and all other papers in support of such objections (including
12 any briefs of declarations) on counsel for the parties identified in the Class Notice.

13 All such objections shall be mailed to or hand-delivered to the following address:

14 United States District Court, Western District of Washington
15 Attn: Spafford v. Echostar Class Action Objections Case No. C06-479RAJ
16 700 Stewart Street
Seattle, WA 98101

17 IN ADDITION, in order to be considered for hearing, all objections must be actually
18 received by class counsel identified in the Class Notice on or before November 24,
19 2008 at the following address:

20 TOUSLEY BRAIN STEPHENS PLLC
21 Kim D. Stephens, P.S., WSBA #11984
22 EchoStarSettlement@tousley.com
1700 Seventh Avenue, Suite 2200
23 Seattle, Washington 98101
Telephone: 1-800-259-2652

24 A Class Member need not appear at the Fairness Hearing in order for his, her or its
25 objection to be considered.

26 14. To be effective, all requests for exclusion from the Class must (1) be in writing,
(2) comply with the provisions of and contain the information requested as set forth in the

Class Notice, (3) be filed with the Court on or before November 24, 2008, and (4) must be received by the above-listed counsel at the address provided above by November 24, 2008.

15. The settlement on the terms and conditions of the Stipulation of Settlement filed concurrently with the parties joint motion for preliminary approval is hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendants or by any other party or person, or a finding of the validity of any claims asserted in the litigation or of any wrongdoing or of any violation of law by Defendants. The settlement is not a concession and shall not be used as an admission of any fault or omission by Defendants or any other party or person.

16. Any Class Member may enter an appearance in the Action and/or may seek to intervene in the Action, individually or through the counsel of their choice at their expense. Class Members who do not enter an appearance and do not exclude themselves from the Class will be represented by class counsel.

17. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Stipulation.

18. Summary of Dates and Deadlines:

Last Day for Defendants to complete publication of Notice No later than October 10, 2008 shall be the First Notice Publication Date

No later than October 10, 2008 shall be
the First Notice Publication Date

No later than October 24 shall be the Second Notice Publication Date.

Last Day for Defendants to file and serve declaration confirming dissemination of Class Notice

November 7, 2008

Last Day for Parties to File
Opening Brief for Final Approval
and Applications for Attorney's
Fees, Costs, and Class
Representative Incentive Fees

November 12, 2008

1	Deadline for Class Member to object to the settlement	Received by Counsel by November 24, 2008
2	Deadline for Class Member to be excluded from the Class	Postmarked by November 24, 2008
3	Last Day for Plaintiff and Defendants to File a Reply to Any Objection and to File Points & Authorities in Support of Final Approval Fairness Hearing	November 28, 2008
4		
5		
6		<u>December 3, 2008 at 10:00 a.m.</u>
7		
8		

9 **IT IS SO ORDERED.**

10 Dated: October 6, 2008.



11
12
13 The Honorable Richard A. Jones
14 United States District Judge
15

16 Presented by:
17

18 TOUSLEY BRAIN STEPHENS PLLC

19 By: /s/ Kim D. Stephens, P.S., WSBA #11984
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26 LEVY RAM & OLSON LLP
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3 Karl Olson, *Pro Hac Vice* [CSB #104760]
4 ko@lrolaw.com
5 639 Front Street, Fourth Floor
6 San Francisco, CA 94111-1913
7 Tel: 415.433.4949

5 *Attorneys for Plaintiff Michael Spafford, Jr.*

6 Copy Received; Form Approved, and
7 Notice of Presentation Waived By:

8 T. WADE WELCH & ASSOCIATES

9 By: /s/ Joseph H. Boyle [by email authorization]

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23 *Attorneys for EchoStar Defendants*